

SALLY BURKHART
On behalf of herself and as
Personal Representative of
The Estate of David Burkhart
483 Nottingham Way
Campbell, California 95008

David T. Burkhart
On behalf of himself
404 Ivy Lane
Pleasant Hill, CA 94523

FILED

AUG 23 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ESTATE OF DAVID BURKHART,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS,

Defendants.

) Case No.: C 07-5467 PJH

)
) **DECLARATION OF DAVID T.**
) **BURKHART IN SUPPORT OF**
) **PLAINTIFFS' OPPOSITION TO**
) **MOTION TO DISMISS**

) Date: August 6, 2008

) Time: 9:00 a.m.

) Location: Courtroom 3, 17th Floor


) Honorable Phyllis J. Hamilton
)

I, David T. Burkhart, declare as follows:

1. David Burkhart, the decedent referenced in this action, was my father ("The Decedent"). Sally Burkhart, a party to this action, is my mother.
2. Sally Burkhart and I worked together to prepare the original complaint for this lawsuit.
3. Sally Burkhart and I worked together to prepare the First Amended Complaint. On the morning of June 4, 2008 I was scheduled for a surgery at John Muir Hospital in Walnut Creek, California. Prior to my arrival at the hospital I emailed to Sally Burkhart an incomplete computer file of the First Amended Complaint in this matter. The pages I emailed to Sally Burkhart were not the complete First Amended Complaint. The First Amended Complaint filed on June 4, 2008 contained a combination of the original filed complaint in this matter with certain pages from the draft First Amended Complaint.
4. I informed attorney Jennifer Wang about this filing error by telephone in late June or early July. Before Ms. Wang would agree to take this motion to dismiss off calendar she requested a copy of the corrected First Amended Complaint. I did not provide Ms. Wang with a copy of the Corrected First Amended Complaint and decided instead to address this issue in response to this motion.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 23, 2008 at San Francisco, California.

A handwritten signature in black ink, appearing to read "D.T. Burkhart", written over a horizontal line.

David T. Burkhart, on behalf of himself